

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TRANSFIELD ER CAPE LIMITED
(IN LIQUIDATION),

Plaintiff,

v.

NORTH CHINA SHIPPING LIMITED; NORTH
CHINA SHIPPING HOLDINGS COMPANY
LIMITED, HONG KONG; GREAT PERIOD
INVESTMENTS LIMITED; MARINA
PERIDOT SHIPPING LIMITED

Defendants.

IN ADMIRALTY

No.: 3:12-cv-06091BHS

**ORDER APPOINTING MARINE
LENDERS SERVICES, LLC, AS
SUBSTITUTE CUSTODIAN**

Having reviewed Plaintiff's Motion for the Appointment of a Substitute Custodian and the supporting Declarations of Jeremy B. Jones and Buck Fowler, Jr., and good cause appearing,

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. Plaintiff's Motion is GRANTED.

2. Marine Lenders Services, LLC, is appointed to act as substitute custodian of the defendant vessel OEL CONFIDENCE, IMO Number 9628910, her engines, tackle, gear, electronics, appurtenances, etc., (hereafter, the "Vessel") during *custodia legis* on behalf of this Court, in place and instead of the United States Marshal, until further order of the Court.

3. Immediately following attachment of the Vessel, the United States Marshal for

1 this District shall transfer custody of the Vessel to substitute custodian Marine Lender Services,
2 LLC.

3 4. Marine Lenders Services, LLC, as substitute custodian, shall see to and be
4 responsible for the safekeeping of the Vessel. The duties of the substitute custodian include, but
5 are not limited to, ensuring that there is an adequate, safe location for the Vessel's storage. An
6 officer or agent of the substitute custodian shall go on board the Vessel from time to time to
7 carry out the duties of substitute custodian. No person shall be allowed to enter on the Vessel
8 except as provided for herein or as otherwise expressly authorized by order of this Court.

9 5. Upon transfer of custody of the Vessel to the substitute custodian by the United
10 States Marshal, the Marshal shall not be liable for any loss occurring while the Vessel remains in
11 the custody of the substitute custodian and the substitute custodian shall indemnify and hold the
12 plaintiff and the Marshal harmless from any and all claims arising out of the substitute
13 custodian's possession and safekeeping of the Vessel.

14 6. All reasonable expenses of the United States Marshal shall be administrative
15 expenses in this action and a first charge to the Vessel herein, to be paid to the Marshal prior to
16 the release of the Vessel or distribution of the proceeds of its sale.

17 7. All reasonable expenditures which may be incurred by the plaintiff and the
18 substitute custodian, or by any party advancing funds to the substitute custodian, including, but
19 not limited to, all insurance, towage, transport, and other costs of moving the Vessel to a suitable
20 storage location, in safekeeping and maintaining the Vessel while it is in *custodia legis*, and costs
21 of maintaining adequate insurance on the vessel while it is in *custodia legis* shall be
22 administrative expenses in this action and a first charge on the Vessel, to be to be paid prior to
23 the release of the Vessel or distribution of the proceeds of its sale.

24 8. During *custodia legis*, Marine Lenders Services, LLC, shall maintain appropriate
25 legal liability insurance providing a minimum coverage of Five Million Dollars (US\$5,000,000),
26 which expenses for insurance shall constitute administrative expenses herein.

1 9. Upon transfer of the Vessel from the United States Marshal to Marine Lenders
2 Services, LLC, the Vessel may be moved by safe means from its present location to adequate,
3 safe storage at anchorage or other suitable location within the Western District of Washington.
4 Marine Lenders Services, LLC, shall notify the office of the Marshal that the Vessel is to be
5 moved and will notify the office of the Marshal again when the Vessel has been moved. Once the
6 Vessel has been moved to the facilities of the substitute custodian or other suitable location, the
7 Vessel shall remain always within the Western District of Washington.

8 10. Marine Lenders Services, LLC, as substitute custodian, may if necessary offload
9 any cargo aboard the Vessel and arrange for storage of the same at a suitable storage facility. The
10 substitute custodian shall notify the office of the U.S. Marshal prior to engaging in any such
11 offloading of cargo and again upon the completion of any such offloading.

12 11. Marine Lenders Services, LLC, as substitute custodian, may if necessary offload
13 any fuel and arrange for disposal of the same. The substitute custodian shall notify the office of
14 the U.S. Marshal prior to engaging in any such offloading and again upon the completion of any
15 such offloading.

16 12. Marine Lenders Services, LLC, as substitute custodian, may, but is not required
17 to, retain a marine engineer familiar with the Vessel and to take him or her on board the Vessel
18 with authorized agents of Marine Lenders Services, LLC to assist in the securing of the Vessel.

19 13. Marine Lenders Services, LLC, as substitute custodian, may, but is not required
20 to, retain such services as are necessary to clean the interior and/or exterior of the Vessel, remove
21 food products with such services to be performed under the supervision of the substitute
22 custodian.

23 14. Plaintiff shall arrange to pay charges for moorage of the vessel and the fees, costs,
24 and legal liability insurance premiums of the substitute custodian and shall reimburse the
25 substitute custodian for such other costs as may be incurred in conduction of the inventory of the
26 equipment on board, in securing the Vessel, in having the Vessel cleaned, in moving the Vessel,

1 and/or in offloading any cargo from the Vessel.

2 15. During *custodia legis* the substitute custodian shall not permit repairs or changes
3 to be made to the Vessel, except for routine maintenance required for the Vessel's safekeeping,
4 or in emergency situations, without an order of this Court.

5 16. During *custodia legis*, all foreign crew members may remain on board the Vessel
6 and continue to operate and maintain all ship systems pending further order of this Court.

7 17. During *custodia legis*, the substitute custodian shall permit the conduct of cargo
8 and other operations normal to a vessel in berth unless otherwise ordered by this Court.

9 18. Plaintiff's attorney shall send a copy of this Order to the owner of the Vessel at
10 the last address known by plaintiff, and to the address shown on the record of the U.S. Coast
11 Guard by Certified Mail, Return Receipt Requested.

12 DATED this 31st day of December, 2012.

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BENJAMIN H. SETTLE
United States District Judge

Presented by:

NICOLL BLACK & FEIG, PLLC

/s/ Jeremy B. Jones

Christopher W. Nicoll, WSBA No. 20771
Jeremy B. Jones, WSBA No. 44138
Attorneys for Plaintiff